

Exhibit 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARCHIE COMIC PUBLICATIONS, INC.,

Plaintiff,

vs.

KENNETH W. PENDERS, II,
alk/a KEN PENDERS

Defendant.

Case No.: 10-CV-8858 (RMB)

Judge: Hon. Richard M. Berman

**AFFIDAVIT OF BERNADETTE
SHAHIN IN SUPPORT OF PENDERS'
OPPOSITION TO PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT AND
CROSS-MOTION FOR SUMMARY
JUDGMENT**

I, BERNADETTE SHAHIN, declare under penalty of perjury:

1) I am located at 12147 Woodley Avenue, Granada Hills, CA, 91344-2846. I make this declaration in Support of Defendant Penders' Opposition to Plaintiff's Motion for Summary Judgment and Cross-Motion for Summary Judgment.

2) I first met Ken Penders on a Saturday evening, May 6, 1995, and began a personal relationship that has allowed me to become involved in his professional life on a semi-regular basis.

3) I witnessed Ken working as a freelance writer and artist for many companies over the years. When I first met him he was working on a STAR TREK project in addition to the work he was submitting to Archie Comics.

4) Ken would always take his work everywhere with him, writing stories in his notebooks whenever an idea for a plot or character came to mind. I would often buy blank notebooks on sale over the years for him to use for this.

5) Ken always started his creation process with random notes and images scribbled down that initially I found indecipherable, but I soon learned it was a language that made complete sense to Ken as the finished works were the result of this process.

6) Ken would ask me to review various documents from time to time. On or around December 12, 1996, Ken presented me with a one page unsigned document offering a health care plan to Archie freelancers. As Ken was enrolled in the VA system, I recommended he decline the coverage, and sign the one-page document.

7) At no time during 1996 or anytime after did Ken ever receive any multi-page contractual document of any kind from Archie Comics.

8) During the summer of 1996, Ken and I took our children to the San Diego Comic-Con, where Ken worked to promote his work, primarily on the SONIC THE HEDGEHOG comics. He was not paid or compensated in any way by Archie Comics for this work.

9) Ken and I attended a number of comic book conventions over the years throughout the US and Canada promoting his work. He would usually sit and draw free sketches, sign autographs, pose for pictures and answer any fan's questions while I would handle the business transactions of selling comic books, original art and prints, and taking orders for commissioned art requests. I would also deal with editors from other companies as well as other prospective clients from companies such as Sega, Hasbro, Microsoft, Sony and Bioware who wished to discuss business with Ken. I would take down their information and arrange for further meetings.

10) Ken was submitting stories and art to Archie Comics with no promise of long-term commitment made to him, certainly not from the publishers or Managing Editor Victor Gorelick, whom I met over the years at the San Diego Comic-Con.

11) I witnessed Ken signing blank Archie Comics invoices he was supplied by the SONIC editors at Archie Comics. They would send him a stack of these invoices periodically for him to sign only his signature and send back, which they in turn would fill out. When I questioned this, Ken explained to me this made getting paid for his work more efficient.

12) During the summer of 1999, while attending the San Diego Comic-Con, we met animation producer/director Larry Houston and his sons for the first time. Larry expressed interests in Ken's new creation THE LOST ONES while his sons were huge SONIC comic book fans who asked Ken lots of questions.

13) After the convention, Larry got in contact with Ken and expressed interest in working together, telling him if he ever moved out to the Los Angeles area he would help him break in to the animation business.

14) After our move to Temecula, CA during the fall of 2001, Ken initially began pursuing TV opportunities that were opening up for THE LOST ONES.

15) Sometime during 2002, Ken and Larry were soon talking about working together and decided to pursue putting together an animated film project based on Ken's SONIC and KNUCKLES stories. They then contacted Sega Licensing Manager Robert Leffler and began a dialogue with him. I was involved with these discussions.

16) I drove Ken to the airport the first time they traveled to San Francisco to meet Sega Licensing Manager Robert Leffler.

17) I was involved in the first face-to-face meetings with Sega executives as a partner of the new company Floating Island Productions which Ken, Larry and I formed.

18) The meeting was conducted sometime early in September of 2003. We arranged with Robert Leffler to meet in the dining room of a hotel located just off Sunset Blvd in

Hollywood, CA. Ken and I drove in together, while Larry met us there. Present at the meeting were two Sega executives from Japan, and Robert Leffler from Sega of America.

19) We initially approached the meeting from the perspective of FIP licensing the SONIC characters in order to make a feature animated film based on Ken's stories. This would be the first of such meetings over the years with representatives of Sega with the intent of launching an animated project licensing their intellectual property.

20) During our initial presentation and discussion with the Sega representatives, Archie Comics was never directly mentioned, except that Ken was the series' main writer. Neither side considered Archie Comics involved during this discussion or any subsequent ones regarding our proposed animated film project. We were surprised during this initial meeting when the Sega representatives suggested a 50/50 partnership deal as opposed to the traditional licensing arrangement. At no time was it suggested that Archie owned any of the characters proposed to be used in the film.

21) The initial deal we were working out with Sega subsequently fell through due to Senior Executive changes in the company. However, Sega Licensing Manager Robert Leffler believed our project to be a viable one and worked with us until his untimely death during the summer of 2007.

22) I dealt with Robert Leffler on a number of occasions, meeting with him at the E3 video game trade shows which he provided passes for Ken, Larry and I to gain admittance, as well as meeting at the San Diego Comic-Con and discussions concerning contracts, presentations, promotions and licensing, both in person and over the phone. I believe I also exchanged e-mails with him as well, but usually it was Ken who initiated contact via this method.

23) During the summer of 2006, at the San Diego Comic-Con, I was sitting at the table in the Artists Alley that Ken had been assigned. Sitting next to me was Ken's son Stephen. We were approached by someone who said he was from Bioware and was interested in speaking with Ken concerning a video game they were starting to develop. We informed him that Ken was taking a break and asked him to come back later, but he never did.

24) After Ken's experience working on the animated television series KING OF THE HILL, I encouraged him to continue work on the various concepts he created and develop them for the marketplace, using the internet to promote and distribute the work. Among the projects he had been working on over the years were ROAD BUDS, COLONY SIX CARA (which my daughter Cara had been the inspiration for), THE MAN WITHOUT A COUNTRY and THE LOST ONES.

25) During the late summer of 2008, Ken told me he was hearing from a number of people that wondered if he had been involved with the SONIC video game that had just been released. He said friends and fans were contacting him because apparently the video game featured material from his KNUCKLES stories.

26) Ken discussed with me what he should do, and I recommended he do some research first so we could decide what needed to be done.

27) Ken arranged a meeting in November of 2008 with attorney Michael Lovitz which I also attended. Ken told Michael and another attorney the details of his problem, which I corroborated where I could.

28) At the time, we were advised that Ken should contact Archie Comics to see what if any contracts Archie had in the files. If they had anything, we were told, there was no reason not to disclose these documents. Ken and I knew he never signed any contracts with Archie.

29) Before contacting Archie, Ken and I had a discussion concerning the costs, time and effort involved in such an endeavor. We decided to proceed by contacting Victor Gorelick at Archie Comics to see if we could get him to commit in writing that Archie possessed no such contractual documents.

30) Ken contacted Victor Gorelick by telephone sometime in early December 2008. As we both work at home on a regular basis, I was able to stand next to Ken and listen to the full conversation. When Ken asked Victor if Archie specifically had any copies of documents between him and the company for his records, Victor responded by telling him he did not believe a contract existed and did not offer to check his files to confirm it one way or the other. Ken also asked about original art which had never been returned, and Victor said he would check into it.

31) I witnessed Ken attempting to contact Victor both by phone and e-mail multiple times over a two-month period (in an attempt to get some answer in writing with regards to the existence of any contracts) but Victor would not return his calls or respond to his e-mail.

32) After informing attorney Michael Lovitz of the extent Ken had gone through to establish whether or not Archie had any signed documents with Ken's name, he advised us that Ken should proceed to file the registrations for his Copyrights.

33) The foregoing facts are based on my personal knowledge. If called to testify regarding these facts, I could and would so competently testify.

I, Bernadette Shahin, declare under penalty of perjury, that the foregoing is true and correct.

Executed on March 6th, 2012.

